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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,896	10/12/2004	Horst K. Wieder	10020	5895
36483	7590	03/13/2006	EXAMINER	
JOHN K. MCCORMICK 6781 GLACIER DRIVE WEST BEND, WI 53090				VERBITSKY, GAIL KAPLAN
		ART UNIT		PAPER NUMBER
				2859

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

B) ✓

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/711,896	WIEDER, HORST K.	
	Examiner Gail Verbitsky	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/12/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 1-4 are objected to because of the following informalities:

Claim 1: A) "filled mostly but not entirely" makes the claim language confusing because it is not clear what applicant positively claims. Perhaps applicant should replace this limitation with --substantially filled--.

B) "the" before "said float" in lines 9, 11, 12 and 13, "said indicator ring" in line 12 should be deleted.

Claims 2 and 4: "the actual temperature levels" lacks antecedent basis.

Claim 2: "the" before "said printing" should be deleted.

Claim 3: A) "the temperature" in line 1 lacks antecedent basis.

B) "the said indicator ring" in line 12 lacks antecedent basis. Perhaps applicant should insert --adjacent to an indicator ring—after "a tube" in line 3.

C) "the" before "said tube" in lines 5-8, "said liquid" in line 8, "said frozen tube" in line 10 , "said tube in line 11, "said contained in line 11, "said indicator ring" in line 12, "said tube" in line 12, "said temperature" in line 13, "said container" in line 14 has to be deleted.

Claim 4: A) perhaps applicant should replace the term "replacing" with the term – placing—in order to clearly describe the invention.

B) "the" before "said marking" and "said tube" should be deleted.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Regarding claim 1, the phrase "such as" in line 8 renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

4. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In this case, the claim language in step **h** is confusing because it is not clear why the steps **c** through **g** should be repeated, if the temperature of the contained has been determined in step **g**. Perhaps applicant should replace the step **h** with –repeating steps **c** through **g** to verify temperature measurements or repeating step **e** to conclude temperature measurements--. Is this a proper interpretation of the invention? Clarification is required. Furthermore, please note, that in the rejection on the merits, the examiner interpreted the step **h**, as modified (suggested by Examiner) above.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (U.S. 4064828) in view of Friedrichs (U.S. 3054293).

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Clark discloses a freeze/ thaw indicator comprising a foam float 2-3 sealed/ positioned inside a transparent tube with a liquid. When the liquid is frozen (expanded), the float is positioned on top inside the tube, when the temperature is below freezing, the liquid is thawing, and the float 2-3 does down the tube. The device is to be positioned in a container. Clark states that the temperature can be evaluated quantitatively (col. 5, last line). The method steps will be met during the normal operation of the device stated above. The device is reusable, thus, the steps of placing it inside the container could be repeated.

Clark does not clearly teach the marking zones with graduations on the tube, as stated in claims 3-4.

Friedrichs teaches a thermometer having marking zones (temperature ranges) with graduations showing how the liquid inside a transparent tube expands depending on the temperature.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device, disclosed by Clark, so as to add marking zones with graduations, as taught by Friedrichs, in order to allow the operator to see both, critical and intermediate temperature and level of the float.

***Allowable Subject Matter***

7. Claims 1-2 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

*G. Verbitsky*  
Gail Verbitsky  
Primary Patent Examiner, TC 2800

March 03, 2006